# HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

**Cr. A. No. 450 of 2000**

**Date of Decision: 9.10.2007**

State of H.P. ……. Appellant

Versus

Lachhman Singh and Others …….. Respondents.

***Coram***:

**The Hon'ble Mr. Justice Sanjay Karol, Judge.**

*Whether approved for reporting? No*

For the appellant : Mr.Ashok Chaudhary Addl. A.G

For the respondents : Mr. K. S. Banyal, Advocate.

**Sanjay Karol, J. (Oral)**

The present appeal arises out of the judgment dated 10.2.2000 passed by the Addl. Chief Judicial Magistrate, Hamirpur, in Criminal Case No. 275-I/94, titled as State v. 27-II/95 Lachhman Singh and others, acquitting the accused persons of the charged offence.

As per the case of the prosecution, on 6.6.1994 accused Lachhman Singh along with other accused persons came to the land belonging to Smt. Neelam Kumari complainant and gave a blow with a darat (sharp edged weapon), which hit her right thumb. Smt. Savitri Devi and Shri Titu Ram were also given beatings as a result of which they also suffered injuries. The

building material and articles brought by the complainant for construction at the site were also removed and taken away by the accused persons.

Matter was reported to the police and FIR (Ext.PW-7/A) was registered on 6.6.1994 with Police Station, Hamirpur under sections 147, 149, 447, 323, 324, 506 and 379 IPC. The injured were got medically examined and treated. With the completion of investigation, the challan was presented in the Court for trial.

After complying with the provisions of Section 207 Cr.PC, all the accused persons were charged for the offences under Sections 447, 379, 323, 324, 506 & 147 IPC read with Section 149 IPC who did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined 11 witnesses. Statements of accused u/s 313 Cr.PC were recorded and the accused examined one witness in defence.

After examining the entire material on record including the statements of the witnesses, the Court below acquitted the accused persons for the reason that the prosecution had failed to prove its case; there was no iota of evidence to show that the accused persons had trespassed into the property of the complainant; and had removed the construction material and other articles

Complainant Smt.Neelam Kumari (PW-1) and Shri Titu Ram (PW-2) are the persons who have received injuries in

addition to Smt. Savitri Devi at the hands of the accused. Shri Amar Nath (PW-3) has witnessed the recovery of weapons of offence Exts. P-5 & P-7. Shri Kamal Dev (PW-4) and Shri Roshan Lal (PW-5) are the independent witnesses. Shri Dhian Singh, Kanungo (PW-6) is a official witness. ASI Sukh Dev (PW-7) is also a formal witness. SI Shri Beli Ram (PW-8) is the Investigating Officer who has carried out the investigation. SI Shri Ram Lal (PW-9) is a Police Officer. Dr. R. K. Kanwar (PW-10) has examined the injured and Shri Mohinder Singh (PW-11) is the witness led by the accused persons.

Statements of PW-1, PW-2, PW-4, PW-5 & PW-10, need to be examined for determining the guilt of the accused persons.

PW-10 has stated that the injuries on the body of Smt. Savitri Devi and Shri Titu Ram are superficial in nature, which can be caused by falling on hard surface. Injuries on the body of Smt. Neelam Kumari (PW-1) are simple in nature and has further stated that all the injuries on the body of PW-1 can be caused by falling on sharp edged weapon.

Through the statement of PW-1, it has come on record that accused Lachhman Singh is a co-sharer of the land in question. This fact is also corroborated by PW-2. Accused Lachhman Singh has placed on record copy of jamabandi (revenue record) Ext.D-1 to show that he is a co-owner and in possession of the land in question.

Through the depositions of PW-1 & PW-2, it has also come on record that the parties have been litigating for quite sometime and there is a prior civil litigation pending with respect to the land in question. Shri Dhian Singh, Kanungo (PW-6) has also deposed that he carried out the demarcation at the request of PW-1 in the absence of the accused persons. Therefore, his report Ext.PW-6/A, in my view, considering the fact that accused Lachhman Singh is a co-owner, cannot be referred to and relied upon to prove the fact that the land exclusively belonged to the complainant. PW-11 has not supported the case of the prosecution and has been declared hostile. In his cross-examination, nothing has come on record to prove the guilt of the accused.

Further, version of PW-1 & PW-2, is to the effect that at the time of incident, approximately 50 to 60 persons were present at site who had witnessed the incident. Importantly, none of the eye witnesses has been associated by the Investigating Agency nor examined in the Court. Therefore, in this background, the statements of PW-1 & PW-2 need to be examined with caution. PW-4, who is alleged to have brought the construction material at the site has not stated that any of the accused persons had inflicted injuries on PW-1 and her companions. In fact according to him, no quarrel took place in his presence. The Court below has already held that except for

PW-1 & PW-2, none else deposed that the accused persons gave beatings to the complainant.

There is no evidence on record to show that the accused persons had removed the building material belonging to PW-1. She has not clarified as to who was carrying the darat with which the blow was given to her. In fact except for accused Lachhman Singh, she has not even identified or recognized any of the accused persons who were present at the spot.

The dispute pertains to the possession of the land, ownership whereof is claimed by two parties i.e. the complainant and accused Lachhman Singh. PW-1 has already admitted that there is a long pending dispute between the parties with regard to which they have been litigating. No explanation is forthcoming as to why any of the independent witness was not examined in the Court. Even PW-4 & PW-11 being in the employment of PW-1, have not supported the case of the prosecution.

It is in this background that the version of PW-1 has been examined and found not inspiring confidence. Even otherwise, in my view, the same does not prove the guilt of the accused persons for the charged offence.

The accused have the benefit of having been acquitted by the Court below. The material on record, including the depositions of the witnesses, has been correctly appreciated by the Court below while arriving at its conclusion. There is no perversity in the same. I see no reason to interfere with the

judgment dated 10.2.2000 passed by the Court below and the appeal is accordingly dismissed. The bail bonds are discharged.

**( Sanjay Karol ),**
**Judge.**

**October 9, 2007**
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